

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENIO PENA,

No. C 11-06692 SBA (PR)

Petitioner,

**ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS; AND
DENYING CERTIFICATE OF
APPEALABILITY**

v.

R. GROUNDS, Warden,

Respondent.

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming that his constitutional rights were violated in connection with a decision by the California Board of Parole Hearings (Board) in September 18, 2009 denying him parole. Petitioner specifically claims that the decision does not comport with due process because it is not supported by "some evidence" demonstrating that he poses a current unreasonable threat to the public. He also claims that the Board applied an "illegal policy" in denying him parole, which violated his right to due process.

Petitioner has paid the full filing fee.¹

A prisoner subject to California's parole statute receives adequate process when he is allowed an opportunity to be heard and is provided with a statement of the reasons why parole was denied. Swarthout v. Cooke, 131 S. Ct. 859, 862 (2011). The attachments to the petition show Petitioner received at least this amount of process. The Constitution does not require more. Id.

Whether the Board's decision was supported by some evidence of current dangerousness is irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what the Constitution demands) was correctly applied." Id. at 863.

For the foregoing reasons, the petition for a writ of habeas corpus is DENIED. Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability under 28 U.S.C.

¹ Petitioner inadvertently paid the \$5.00 filing fee in his other case, Case No. C 12-0023 SBA (PR), which has been dismissed as filed in error. (Jan. 19, 2012 Order of Dismissal in Case No. C 12-0023 SBA (PR) at 2.) The Clerk of the Court is directed to transfer the proof of payment of the full \$5.00 filing fee (receipt number 34611069864) to the instant action.

§ 2253(c) is DENIED because it cannot be said that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the Ninth Circuit Court of Appeals.

The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending motions, and close the file.

IT IS SO ORDERED.

DATED: 2/9/12


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4
5

6 EUGENIO PENA,

Case Number: CV11-06692 SBA

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.

9 BOARD OF PRISON et al,

10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on February 10, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Eugenio Pena
19 San Quentin State Prison
Prisoner Id H-77082
San Quentin, CA 94974

20 Dated: February 10, 2012

21 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
22
23
24
25
26
27
28